

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 30.10.2019

PRONOUNCED ON : 05.11.2019

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Writ Petition No.26902 of 2018 and
W.M.P.Nos.31250 and 31255 of 2018 and 28165 of 2019

Dharma Medical Research &
Charitable Trust,
No.48, Grand West Trunk Road,
Sriperumbudur – 602 105,
Kancheepuram District,
Tamil Nadu,
Rep. By its Trustee

...

Petitioner

Vs

1.The Union of India,
Rep. By the Secretary to Government,
Ministry of Ayush,
Ayush Bhawan, B Block,
GPO Complex, INA,
New Delhi – 110 023.

2.The Under Secretary to
Government of India,
Ministry of Ayush,
Ayush Bhawan, B Block,
GPO Complex, INA,
New Delhi – 110 023.

3.Central Council of Indian Medicine,
61-65, Institutional Area,
Janakpuri, New Delhi – 110 058,
Rep. By its Secretary,

4.The Government of Tamil Nadu,
Rep. By the Secretary to Government,
Health & Family Welfare Department,
Fort St. George, Chennai – 9.

5.The Director of Indian Medicine & Homeopathy
Directorate of Indian Medicine & Homeopathy,
Anna Hospital Campus, Arumbakkam,
Chennai – 106.

6.The Secretary,
Selection Committee,
Director of Indian Medicine & Homeopathy,
Anna Hospital Campus, Arumbakkam,
Chennai – 106.

7.The Registrar,
The Tamil Nadu Dr.MGR Medical University,
P.B No.1200, No.69, Anna Salai,
Guindy, Chennai – 600 032.

8.The Controller of Examination,
The Tamil Nadu Dr.MGR Medical University,
P.B No.1200, No.69, Anna Salai,
Guindy, Chennai – 600 032.

... Respondents

Prayer :- This Writ Petition is filed under Article 226 of the Constitution of India for a writ of Certiorarified mandamus calling for the records relating to the impugned order passed by the second respondent vide proceedings in F.No.17011/188/2018-EP(IM-1) dated 27.09.2018, quash the same and direct the respondents 1 and 2 to grant permission to Dharma Ayurveda Medical College & Hospital, Sriperumbudur for admission of students for a period of 5 years from 2018-2019.

For Petitioner :Mr.V.Selvaraj for
Mr.D.Jayasingh

For Respondents 1 & 2 :Mr.N.Rajan, SCGSC

For 3rd Respondent : Mr.K.Vellayaraj

For Respondents 4 to 6 :Ms.V.Annalakshmi,
Government Advocate

ORDER

The petitioner Trust is running an Ayurveda Medical College and Hospital at Sriperumbudur. The Government of Tamil Nadu granted permission to the petitioner Institute on 20.06.1997 and the Institute is affiliated to Dr.M.G.R Medical University. The Institute is offering Bachelor of Ayurvedic Medicine and Surgery (B.A.M.S.,) course. After introduction of Sections 13A, 13B and 13C of the Indian Medicine Central Council Act, 1970 and Indian Medicine Central Council (Requirements of Minimum Standards for Under Graduate Ayurveda Colleges and attached Hospitals), 2016, grant of permission for Ayurveda/Sidha college is vest with the Central Government and the same is renewable each academic year.

2.Being an existing Institute within the ambit of Section 13C of the Indian Medicine Central Council Act, 1970 (hereinafter referred to as "the

Act”) and having fulfilled necessary infrastructure, the petitioner Institute was permitted to continue the college by order dated 03.11.2016 by the second respondent for admitting students for the academic year 2016-2017, on condition that the shortage of faculty pointed out should be rectified. Similarly, for the academic year 2017-2018, permission was granted by the order dated 04.08.2017 for one year with same conditions.

3.To grant permission for the academic year 2018-2019, the Central Council of Indian Medicine visited the petitioner college on 09.02.2018 and 10.02.2018. The infrastructure facilities, faculty and the staff were all inspected by the Visiting Team and they recommended for grant of permission for the academic year 2018-2019. However, when there was change of President of Central Council of Indian Medicine, a fresh committee was constituted and two member committee inspected the petitioner Institute on 25.05.2018 and 26.05.2018.

4.Pursuant to the inspection committee report, the second respondent issued a proceeding dated 13.08.2018 intimating that the petitioner Institute appears to have not fulfilled certain requirements and therefore, to appear before the hearing committee and produce all relevant valid documents/records to show that the deficiencies/short comings are rectified.

The petitioner Institute participated. The petitioner College was denied permission by order dated 27.09.2018 for admitting students for the academic year 2018-2019 on the ground that the Institute has not fulfilled the basic minimum requirement for grant of permission.

5.The deficiencies/short comings pointed out by the second respondent, for refusing permission is that "functional X-ray and ECG, Web based computerized central registration system, Aadhar based geo location enabled attendance system which is installed but is not functioning, USG facility, functional operation theatre and deliveries has not been conducted".

6.The said order is challenged in this writ petition, on the ground that Ayurveda Doctors are not performing major operation and presence of minor operation theatre has been verified and certified by the inspection team and after interim order passed by this Court, granting stay of the family welfare Government Order, which mandates functional operation theatre in the Ayurveda College, deliveries cannot be conducted in the hospital attached to Ayurveda College and therefore, major deficiency mentioned for refusing permission are not possible of compliance. The other deficiencies regarding infrastructure, X-ray, ECG equipments, the same are available in the petitioner Institute and the Visiting Team has verified and acknowledged the

presence of these equipments. As far as the USG facility is concerned, documentary evidence produced before the visitation team as well as the hearing committee that the college has MoU with one Pandian Hospital at Sriperumbudur which is sufficient as per the regulation. The Aadhar based geo location already implemented in the college of ensuring attendance, the visitation team has personally verified the same. Therefore, the second respondent quite contrary to the report of the visitation team and the explanation given by the petitioner college has denied permission for admitting students for the academic year 2018-2019. Hence, sought for certiorarified mandamus to quash the impugned proceedings of the second respondent dated 27.09.2018 and to permit the petitioner Institute to admit students in B.A.M.S., course for the academic year 2018-2019.

7.This Court in the interim application, after hearing the petitioner and the respondents granted interim stay of the impugned order on 10.10.2018 and by virtue of the interim order, the petitioner Institute has admitted students subject of the outcome of this writ petition.

8.The learned counsel for the petitioner assailed the impugned order on the ground that when there is stay order operating against the inspection for conducting operation and absence of functional operation theatre cannot

be a ground for granting permission and further would submit that the second respondent for the current academic year 2019-2020, the Central Council of Indian Medicine carried out an inspection on 18.03.2019 and 19.03.2019 re-assessed the availability of infrastructure and faculty and had recommended the second respondent to grant permission for admitting students for the academic year 2019-2020. Accordingly, the second respondent has granted permission on 23.07.2019 for admitting students for the academic year 2019-2020.

9.The learned counsel for the third respondent referring the counter affidavit would submit that as per the Indian Medicine Central Council (Requirements of Minimum Standards for Under Graduate Ayurveda Colleges and attached Hospitals), 2016, the colleges have to get permission for admitting students every year and permission is granted after inspection by the Central Council of Indian Medicine experts. Any deficiency in the inspection will be informed to the Institute for rectification. If the deficiencies pointed out are not rectified by the Institute, permission will be denied. The petitioner Institute has not fulfilled the basic eligible criteria for establishing Ayurveda college. The visiting committee after inspection found the petitioner college has not fulfilled the following requirements:-

"i.Functional Operation Theatre is not available as per RMS.

"ii.Deliveries have not been conducted from 1st Jan 2017 to 31st Dec 2017.

iii.Web based computerized central registration system simple imprisonment not available as per RMS, 2016;

iv.Availability/functionality of X-ray, ECG and USG not available

v.Aadhaar based Geo location enabled attendance system for teaching staff, non-teaching staff and hospital staff is not available."

10.When the same was sought to be rectified, the petitioner Institute did not rectify it. Therefore, the permission for admitting students was denied after affording opportunity to the petitioner Institute to rectify the same. The petitioner Institute apart from shortage of teaching and non teaching staff, there was deficiency in functionality also which was pointed out to the petitioner Institute vide order dated 27.09.2018.

11.The Institute was also informed that if they rectify the deficiency before 31.12.2019, grant of permission for admitting students for the academic year 2019-2020 will be considered. For the academic year 2018-2019, the admission was denied for deficiency and shortcomings as pointed

out in the impugned order. Whereas, for the next academic year, 2019-2020, permission was granted since, the petitioner has substantially rectified the defects. The petitioner cannot take advantage of granting permission for the subsequent academic year when there was shortage of faculty and infrastructure facilities in the petitioner Institute for the previous academic year.

12.The third respondent being the statutory authority, entrusted with the responsibility as regulating minimum standard in Indian Medicine, if college does not maintain the minimum infrastructure requirement then, it will be detrimental to the students as well as to the public.

13.The respondents 1 and 2 in their counter have stated that the petitioner Institute was granted conditional permission for the academic year 2016-2017 and 2017-2018. The deficiencies were pointed out while granting conditional permission and the petitioner Institute was expected to set right those deficiencies before seeking permission for the next academic year viz., 2018-2019. However, the petitioner Institute did not rectify those deficiencies and continued to run the college with those deficiencies. On 13.08.2018, show cause notice was issued to the petitioner Institute pointing out deficiencies found during the inspection conducted on

25.05.2018 and 26.05.2018. The petitioner Institute was called upon to present their case and to clarify the defects before the hearing committee. The explanation given by the petitioner were not satisfactory and having not set right the shortcomings, the permission for admitting students was refused.

14.The learned counsel for the third respondent submitted that the question 'whether the college has fulfilled the norms or not', has to be tested from the inspection report and the finding of the hearing committee. The deficiencies pointed out by the visiting committee as well as the hearing committee indicate that the petitioner Institute had no adequate infrastructure for running the B.A.M.S., course. The shortage of faculty pointed out by the committee never been rectified by the petitioner Institute, apart from other infrastructure deficiencies. Hence, the order passed by the second respondent denying permission for the petitioner Institute is in consonance with the Act and Rules and there is no infirmity for the Court to interfere.

15.Heard the learned counsel for either side. Petition, counter affidavit relevant Act and Rules perused.

16.The petitioner Institute was permitted to conduct B.A.M.S., degree by the Government of India on the recommendation of Central Council of Indian Medicine since, 1997 – 1998 onwards. After change in the act and rules, the existing Institutes are supposed to submit itself for inspection by the visiting committee of the Central Council of Indian Medicine and accordingly, the Central Council of Indian Medicine (CCIM) carried out inspection of an Institute during the month of May 2016 to re-assess the available facilities of teaching and practical training as well as to verify the compliance submitted by the college.

17.The report of the CCIM was forwarded to the Government of India along with its recommendation. Based on the report and recommendation, the Government of India vide communication dated 03.11.2016, granted conditional permission to the petitioner college with the admission capacity of 40 seats in B.A.M.S., Under Graduate course for the academic year 2016-2017. The permission was granted subject to fulfillment of the following conditions:-

"(i)the college shall obtain the NABH accreditation for the hospital within one year and the NAAC accreditation for the college within two years

from the issuance of the permission letter and college shall submit its compliance to this Ministry as well as the CCIM within specified period:

(ii)all the Minimum Standard Requirements of infrastructure and teaching & training facilities as specified in Regulation 3 of the "Indian Medicine Central Council (Minimum Standard Requirements of Ayurveda Colleges and attached Hospitals) Regulations, 2012" read with amendment Regulations of 2013 by 31st December 2016 to get permission for a period not exceeding five years. Failing which, as per Sub-regulation (4) of Regulation 3 of Regulations namely the "Indian Medicine Central Council (Minimum Standard Requirements of Ayurveda Colleges and attached Hospitals) Regulations, 2012" read with amendment Regulations of 2013 "All the existing collages, which are not able to achieve full compliance of the requirement as specified in these regulations by the 31st December, 2016, shall be denied permission from academic year 2017-2018 onwards and action as envisaged under Section 21 of the Act shall be initiated against all such college apart from rejection of their applications under Sections 13A or 13C, which have been under consideration by way of conditional permissions or denials", and

(iii)all the requirements under the provisions of the IMCC Act, 1970 and relevant Regulations made thereunder should be fulfilled in toto.”

18.This conditional permission was accorded to the petitioner Institute based on Indian Medicine Central Council (Minimum Standard Requirements of Ayurveda Colleges and attached Hospitals) Regulations, 2012 read with amendment Regulations of 2013. Soon after the grant of permission to the petitioner Institute, on 03.11.2016, there was change in the regulation and new regulation of the year 2016 came into effect from 07.11.2016. As per the new regulation, college established under Section 13A and existing under Section 13C of the Act are supposed to fulfill the required minimum standard for infrastructure and teaching and training facilities referred under the regulation by 31st December of every year for consideration of grant of permission for undertaking admissions in the upcoming academic session.

19.For the said purpose, the Central Council of Indian Medicine will visit the college *suo motu* three months prior to the expiry of permission. They will videograph and photograph all staff and infrastructure facilities during their visit and submit along with detailed report and observation to the Central Council of Indian Medicine and it shall submit its

recommendation along with the detailed report to the Central Government within one month from the submission of report by the visitors.

20.The report will be taken into consideration for grant of conditional permission or permission for a period of 5 years to the college. If there is any shortcoming and the college fulfill a bare minimum of essential requirements, under Regulation 3(3) conditional permission for one year will be granted with direction to fulfill the requirements on the basis of the inspection by the Central Council of Indian Medicine.

21.The petitioner Institute herein falls under the category covered under Regulation 3(3). The CCIM which carried on inspection on 25th and 26th May 2018 to re-assess the available facility in the petitioner Institute, found they have not fulfilled the requirements of minimum standard as prescribed under Regulation 2016. The shortcomings pointed out by the visitors of CCIM are as below:-

"(i)Functional Operation theatre is not available as per RMS

(ii)Deliveries have not been conducted from 1st Jan 2017 to 31st December 2017;

(iii)Web based computerized central registration system is not available as per RMS, 2016

*(iv)Availability/functionality of X-ray, ECG and
USG not available;*

*(v)Aadhar based Geo location enabled
attendance system for teaching staff, non-teaching
staff and hospital staff is not available.”*

22.When an opportunity was given to the petitioner Institute to explain the shortcomings pointed out by the CCIM visitors the petitioner Institute availed the said opportunity and submitted its explanation on 21.08.2018. Personal hearing was also given to the petitioner to appear before the hearing committee and present their version. Accordingly, the representatives of the petitioner Institute participated in the personal hearing held on 22.08.2018. Thereafter, the Ministry of AYUSH has passed proceeding dated 27.09.2018 which is impugned in this writ petition denying permission to the petitioner Institute for admission during the academic year 2018-2019.

23.The petitioner college was denied admission permission for the following reasons:-

*“(i)Functional X-ray and ECG as per sub
regulation (7) of regulation 7 of RMS 2016, Web
based computerised central registration system as
per sub regulation (3-i) of Regulation 7 of Indian*

Medicine Central Council (Requirements of Minimum Standards for Under Graduate Ayurveda Colleges and attached Hospitals), 2016 (RMS 2016), Aadhaar based Geo location enabled attendance system which is installed but is not functioning, USG facility, Functional operation theatre and deliveries has not been conducted, as per RMS and approved SOPs/policies issued from time to time.

(ii)The college is not fulfilling the requirements as per sub-regulation (3) of regulation 3 of RMS, 2016, as per approved Standard Operative Procedures (SOPs) and other relevant regulations for granting conditional permission for 40 seats in UG (BAMS) course for the academic session 2018-2019.

(iii)Functional X-ray and ECG, Web based computerised central registration system, Aadhaar based Geo location enabled attendance system which is installed but is not functioning, USG facility, functional operation theatre and deliveries has not been conducted.”

24.As pointed out earlier, under Regulation 2016, the Indian Medical Council in exercise of its power conferred under Section 36(1) has notified a regulation 2016 which has come into effect from 07.11.2016 requirement of

land, requirement of minimum constructed area; requirement of teaching hospital; requirement of technical and other staffs are specifically stated under this regulation.

25. Under Regulation 7(7) of RMS 2016, the Institute should have a clinical laboratory in the hospital complex with infrastructure facilities and man power as specified in schedule I, II, IV, V and VII of the Regulation for carrying out routine, pathological, biochemical and hematological investigation and Ayurvedic diagnostic techniques on the patients referred from outpatient and inpatient departments of the hospital and the minimum staff requirement for the hospital is also specified in Schedule IV of the regulation. The report of the hearing committee regarding shortcomings has observed that the petitioner Institute have only a mini operation theater and had not established major operation theatre. Though the college is having a website, the central registration system could not be opened in other systems. It could be opened only in the personal systems of Principal and vice principal of the College and the Management of the hospital and hence, the petitioner Institute has not complied with the web page central registration system.

26.The X-ray unit though available, the petitioner college could not produce purchase bills for X-ray film, development chemicals and supportive documents including case sheets referring to X-ray. Similarly, though the Institute has ECG unit they are not able to produce ECG rolls purchase bills and supportive documents of the inpatient and outpatient case sheets referring to ECG.

27.The petitioner college is not having USG unit but have a MoU with Pandian Hospital, Sriperumbudur. However, the supportive documents like students posting OPD and IPD case sheets referring to USG unit not produced. From 1st Jan 2017 to 31st December 2017, the College has not conducted any deliveries in their hospital. The Aadhar based geo location enable attendance system for teaching staff and non teaching staff and hospital staffs, not implemented, though, the Institute has purchased device. Based on the serious deficiencies mentioned above were noted by the Hearing Committee, the second respondent has rightly denied permission to the petitioner Institute.

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28.The learned counsel for the petitioner would contend that due to the interim order passed by this Court, the petitioner Institute has already admitted 40 students and they are undergoing course. Further, for the next

academic year viz., 2019-2020, the Government has granted permission to admit students. Therefore, the interest of the students already admitted by virtue of the interim order passed by this Court may be protected.

29.The learned counsel for the third respondent would submit that ever since establishment of the petitioner Institute, as several shortcomings and deficiencies which were regularly pointed out for rectification and conditional permission were granted. Despite sufficient time granted to the petitioner Institute having not rectified the shortcomings which has forced the second respondent to pass the impugned order denying the admission permission.

30.In the light of the above submissions and taking into consideration the fact that 40 students who have been admitted pursuant to the interim order passed by this Court, the second respondent is directed to send a visiting team to the petitioner Institute to assess the availability of infrastructure facilities required for the compliance of the regulation 2016. If the petitioner Institute has fulfilled all the requirements, the admission of 40 students for the academic year 2018-2019 shall be ratified and if not, their admission by virtue of interim order shall not be ratified.

31.With the above direction, the writ petition is disposed of. No costs.
Consequently, connected miscellaneous petition is closed.

05.11.2019

jbm

Index: Yes/No

Speaking order/non speaking order

To

1.The Union of India,
Rep. By the Secretary to Government,
Ministry of Ayush,
Ayush Bhawan, B Block,
GPO Complex, INA,
New Delhi – 110 023.

2.The Under Secretary to
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20/22

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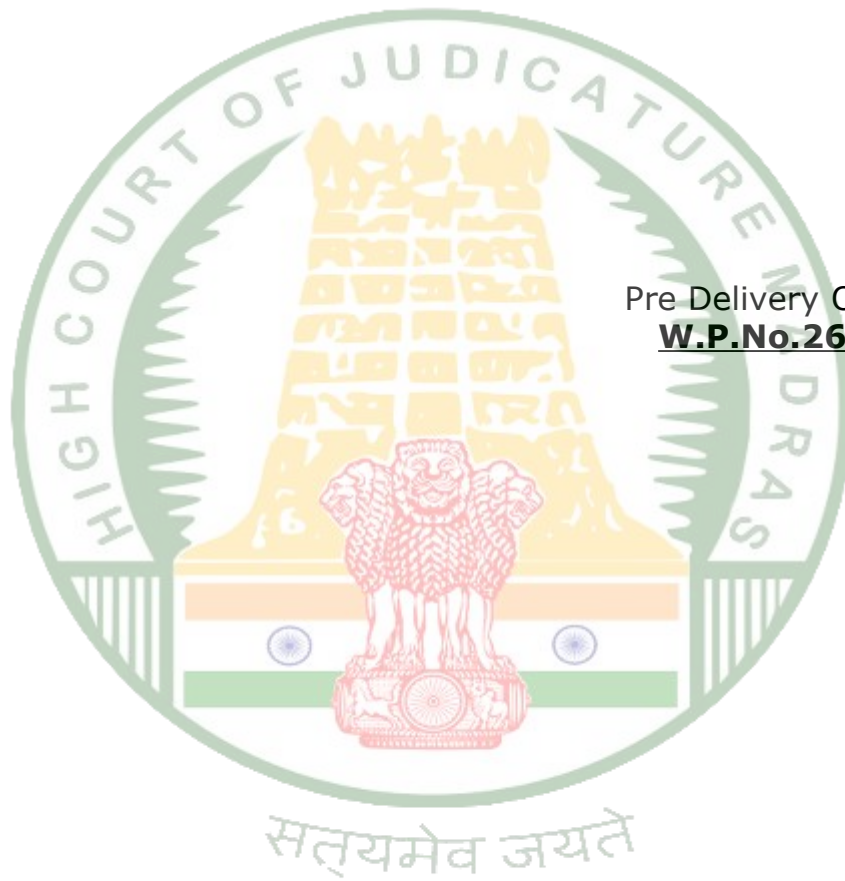
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Pre Delivery Order made in
W.P.No.26902 of 2018

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